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Finally, in determining whether petitioner has asserted a colorable claim for relief under § 2255(a), the court has conducted an initial screening, which reveals that petitioner has made a 21 U.S.C. § 841(b) sentencing enhancement claim under Simmons, in which it is contended that petitioner received a sentencing enhancement based on a now non-

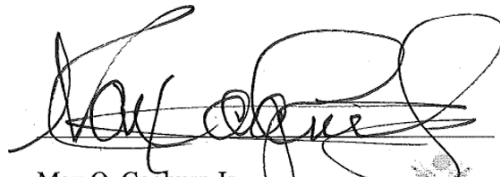
¹ To the extent petitioner has sought relief in the motion under provisions other than § 2255, those claims made in the alternative are denied without prejudice as to refileing as separate motions in the criminal case, *nunc pro tunc*.

qualifying North Carolina offense; specifically, that petitioner received an enhanced minimum sentence under 21 U.S.C. § 841(b)(1)(A).

ORDER

IT IS, THEREFORE, ORDERED that as to petitioner's claim of receiving an enhanced minimum sentence under 21 U.S.C. § 841(b)(1)(A), the claim is summarily **DENIED** under United States v. Powell, ___ F.3d ___, No. 11-6152 (4th Cir. Aug. 20, 2012) as a § 841(b)(1)(A) sentence is a lawful sentence within the unenhanced statutory maximum.

Signed: August 30, 2012



Max O. Cogburn Jr.
United States District Judge